

Filed for intro on 02/18/97  
SENATE BILL 314 By  
Herron

HOUSE BILL 1279  
By Jones, S.

AN ACT to amend Tennessee Code Annotated, Title 29, Chapter 20, Part 2, relative to defense costs and indemnification of governmental employees.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 29, Chapter 20, Part 2 is amended by adding the following language as a new, appropriately designated section:

(a) The attorney designated by each county or city shall represent and defend any employee sued for damages under any federal or state cause of action for an act or omission arising out of the performance of the employee's official duties and while engaged in the course of the employee's employment, provided the employee promptly notifies the employer when suit is served on the employee, makes a request for defense counsel, and cooperates with the defense counsel furnished.

(b) In civil actions where:

(1) The governmental entity and one or more of its employees are defendants, or two or more employees are defendants; and

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(2) The attorney for the governmental entity determines that a conflict exists between the interests of the governmental entity and its employee, or between employees, to the extent that representation of the employee by the attorney for the entity would violate the Code of Professional Responsibility, Canon 5, Rule 8 of the Tennessee Supreme Court; and

(3) The employee would otherwise be entitled to the defense as provided in subsection (a) of this section;

the employee shall then be entitled to employ counsel as provided in subsection (c) of the section.

(c) In those cases where an employee, as defined in subsection (a), is entitled to retain counsel under subsection (b), the governmental entity shall authorize payment of reasonable fees and expenses incurred in the defense of the employee. The governmental entity shall promulgate regulations concerning payment of fees and expenses including, but not limited to the hourly rate, the nature and timing of billing, and requirements for prior approval for extraordinary expenses.

SECTION 2. Tennessee Code Annotated, Title 29, Chapter 20, Part 2 is amended by adding the following language as a new, appropriately designated section:

(a) The governmental entity is authorized to indemnify an employee from a judgment against the employee to an amount as provided hereinafter if:

(1) The judgment results for an act or omission arising out of the employee's official duties and while engaged in official duties, and while the employee was engaged in the course of employment with the governmental entity, and does not result from willful, wanton or malicious

wrongdoings, violations of departmental rules, or violations of orders and rules of the governmental entity; and

(2) The governmental entity has furnished defense counsel to the employee or has authorized separate counsel, and the employee has cooperated with defense counsel.

(b) The governmental entity shall have the discretion to determine whether or not the authority to indemnify an employee, as set forth in subsection (a) of this section shall be exercised. Additionally, the entity shall have the discretion to determine what amount, if any, an employee may be indemnified, but in no event shall such indemnity exceed the amounts set forth in Tennessee Code Annotated, Section 29-20-403 (b)(2).

SECTION 3 . This act shall take effect July 1, 1997, the public welfare requiring it.